*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing	)	
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Filing Date: May 4, 2017	)	Case No.: PSH-17-0035
	)	
	)	

Issued: September 7, 2017

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time. [2]

I. BACKGROUND

Except as otherwise noted, the following facts are undisputed. The individual is employed by a Department of Energy (DOE) contractor, and was granted access authorization in connection with that employment. In 2005, the individual was divorced from his now ex-wife in a very contentious and acrimonious proceeding, as a result of which his ex-wife allegedly received over $1.5 million, including a house, as well as monthly alimony payments of $2,000. In June 2005, the individual was arrested for Criminal Mischief and Reckless Endangerment when he drove his vehicle over the curb and onto his ex-wife's lawn during court-ordered visitation with his children. According to the individual's ex-wife, the individual drove up to the fence where she was standing, breaking

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

[2] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov.

off a sprinkler head in the process. According to the individual, he became distracted while dropping his children off, accidently drove into her yard, panicked when he realized what he had done, and then turned around and did not take the shortest route back to the street. He denies having purposely driven the car towards his ex-wife. As the result of a plea bargain, the individual pled guilty to Disturbing the Peace, and his sentence was deferred with the conditions that he not return to the state in which his ex-wife resides and in which the offense was committed for longer than 15 days without the permission of the court, and that he undergo 36 weeks of domestic violence counseling, with quarterly reports to the court required.

In October 2007, a former girlfriend sent the individual a profane and vulgar e-mail in which she demanded that he stop driving by her home, and stated that she wanted no further contact with him. DOE Exhibit (DOE Ex.). 18. In early November of that year, she filed a petition for a protective order, in which she alleged that the individual had entered into her home without permission when she was not there and gone through her personal belongings, had tried to "break into" her home on other occasions, had taken her mail, and had repeatedly "stalked" her. *Id.* Ten days later, the individual also filed a petition for a protective order. In it, he alleged that his ex-girlfriend had subjected him to harassment, intimidation, and threats of calling the police and of protective orders. *Id.* Both petitions were subsequently dismissed. The individual denied having engaged in the behavior alleged in the ex-girlfriend's petition. DOE Ex. 4 at 6.

In July 2016, the individual and his ex-wife entered into an agreement under which the ex-wife's monthly support payments would terminate on June 1, 2016. The parties also agreed that neither party would contact the other, that all claims arising from the conduct of the parties prior to the date of the agreement would be waived, and that the individual would pay his ex-wife $1,000.00. DOE Ex. 7; 8.

In August 2016, upon returning to the United States from abroad, the individual was informed by Customs officials that his ex-wife had filed a motion for a protective order against him. In her motion, the ex-wife alleged that since their separation in 2004, the individual had engaged in a pattern of harassing and abusive behavior against her, including sending her threatening and abusive letters and e-mails, writing threatening and abusive messages and attaching them to his monthly payments, threatening her attorneys, and attempting to drain her financially through multiple legal actions.

The abusive and threatening communications allegedly sent by the individual to his ex-wife included:

- A letter dated July 15, 2012, containing statements such as "You are nothing but a miserable, vindictive, vile person;" "I assure you it will come back and hunt (*sic*) you;" "I will be in your miserable life for the rest of it and I will make sure it will be hell on wheels as you have made mine for the past last (*sic*) eight years;" "I will hunt you, even in your dreams;" "Cancer is coming soon to you," and "You and your both bastard lawyers, son of the whores will never be forgotten and all of you will pay sooner or later for what you have done to me;"
- Notes attached to the individual's monthly payments with statements like "Here is your check leach (*sic*)," "What goes around comes around. It is bad karma and karma is a

bitch," "You tell your m____f____ lawyer not to f___ with me," and "You are an absolute pathetic; have some dignity."

- An e-mail dated April 25, 2012 from the individual's e-mail account, which included the statements "What the f___ your a____ attorney is saying you did not receive the check," "Not in his wildest dreams will I ever send the check for that son of the whore directly;" and "I promise there will be consequence to you and that crook m____ f____. This is not a threat it is a promise;" and
- A letter dated June 26, 2016 saying things like "I will never forget what you have done to me;" "You have a very dark heart, a hateful heart. You are a tortured soul;" "You are . . . nothing but a total garbage, a trash;" and "Enjoy your miserable life, and mark my words cancer is coming soon. You will pay for your misdeeds." [3]

DOE Exs. 10; 12.

In September 2016, the individual returned to the state in which his ex-wife resided in order to take part in a hearing regarding his ex-wife's motion. Upon his return, he was arrested on warrants for felony stalking and harassment stemming from acts that he allegedly committed against his ex-wife in 2012 and 2013. As the result of a plea bargain, the individual pled guilty to a misdemeanor. He was sentenced to attend domestic violence classes and ordered to remain outside of the state in which his ex-wife resides for a period of one year.

Because this information involved security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in November 2016. After reviewing a transcript of this Personnel Security Interview (PSI) and the individual's personnel security file as a whole, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 24 exhibits into the record of this proceeding. The individual introduced five exhibits and presented the testimony of three witnesses, in addition to testifying himself.

[3] Because of this letter's reference to cancer and apparently believing that the individual had access to radioactive material as a result of his job, the individual's ex-wife had the 2016 letter and envelope tested. No radioactivity was detected.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to Guidelines E and J of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (*Adjudicative Guidelines*).

Guideline E relates to personal conduct, and it provides that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. As support for its invocation of this Guideline, the LSO alleges in the Letter that there are inconsistencies between statements made by the individual during his 2016 PSI and an Affidavit for Arrest Warrant (AAW) that was executed by a local police officer in the state in which the individual's ex-wife resides. Essentially, the LSO alleges that the individual falsely stated during this PSI that he had not sent threatening and vulgar e-mails and letters to his ex-wife on April 25, 2012, January 29, 2013, and July 15, 2012, respectively. Under this Guideline, the LSO also alleges that the individual's denial during this PSI that he had sent threatening and vulgar notes to his ex-wife with his monthly support payments is inconsistent with a petition for a Protective Order dated February 16, 2012.

Guideline J concerns criminal conduct, and it states that such activity also creates doubt about a person's judgment, reliability, trustworthiness, and ability or willingness to follow laws, rules and regulations. As support for its invocation of this Guideline, the LSO cites the information set forth in the preceding section of this Decision. The LSO also relies on a Mandatory Protection Order that was obtained by the ex-wife in September 2016, after the individual allegedly sent her a threatening and vulgar letter in August 2016 in violation of the no-contact agreement that the two had executed in July 2016.

These facts adequately support the invocation of Guidelines E and J, and they raise serious security concerns. Deliberately providing false or misleading information concerning relevant facts during a PSI can raise security concerns under Guideline E, and may be disqualifying. *Adjudicative Guidelines*, ¶ 16(e). Criminal conduct can raise security concerns under Guideline J, and may also be disqualifying. *Adjudicative Guidelines*, ¶ 31(c).

III. REGULATORY STANDARDS

The procedures for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or

reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Mitigating Evidence

At the hearing, the individual attempted to demonstrate, through his own testimony and that of two co-workers and a supervisor, that he is an honest and trustworthy person who can be relied upon to adequately safeguard classified information. The individual testified that, prior to his current difficulties, he had never had a security infraction. Hearing Transcript (Tr.) at 38.

He then testified about his relationship with his ex-wife. The individual said that it was contentious from the day she filed for divorce, when she allegedly "changed the locks on the house," and told him "not to ever come to the house or she'll call the police." Tr. at 39. He attributed the breakup of his marriage to financial issues and the ex-wife's alleged unwillingness to move to the state in which the individual was working. Tr. at 40.

With regard to his 2016 PSI, the individual claimed that he answered every question to the best of his knowledge and recollection. He then testified about the alleged inconsistencies between statements that he made during that PSI and other documents. Specifically, he denied having sent the January 29, 2013, e-mail and the July 15, 2012, letter. The individual said that he informed the police at that time that his e-mail account had been hacked, and he alleged that this was something his ex-wife had done in the past. The letter, he claimed, was not in his writing, and he said that he believes that his ex-wife fabricated it. Tr. at 45-46. Contrary to the allegation set forth in the Notification Letter, he continued, he never denied that he sent the April 25, 2012, e-mail. He also testified that he did admit during the PSI that he had sent "some" of the notes referenced in the Notification Letter that were attached to his monthly support payments. He claimed that the April 25 e-mail, which was directed partly at the ex-wife's attorney, was out of character for him. However, the individual continued that the attorney threatened him many times and called him names. He apologized for writing the e-mail and he wishes that he could "take that thing back." Tr. at 46-48. He also claimed that the notes attached to his monthly checks were out of character, and he apologized for them, too. Tr. at 49.

The individual also testified about therapy that he has been participating in since shortly before the 2016 PSI. He indicated that it has given him some insights into the way that he communicated with his ex-wife, that he has learned how to manage his stresses, anxiety and Depression, and that he is making "a lot of progress." Tr. at 50. [4]

Next, the individual testified that he did not send his ex-wife the letter dated August 12, 2016, and therefore did not violate the "no contact" agreement between him and his ex-wife. He requested the agreement, he said, and it was very important to him. Tr. at 52. [5] Concerning his September 2016 arrest, the individual said that it was based on warrants issued in 2012 and 2013 that he was unaware of. Tr. at 54. Although he denied most of the allegations on which the warrants were based, as the result of a plea bargain, he pled guilty to a misdemeanor. As part of his sentence, he was required to attend domestic violence classes. He has done so, and as of the date of the hearing, had only three classes remaining until the completion of the program. The individual indicated that his attendance has been above average, that he has been engaged in the process, and that he has achieved the goals and the objectives of his treatment plan. Tr. at 57; *see also* Individual's Exhibits D and E.

The individual then testified about the relationship with his former girlfriend that led to both of them seeking protective orders. He said that he met her in January 2007, and that by April "we decided that it's not for either one of us, and I moved on." Tr. at 60. After he received her October 2007 e-mail in which she accused the individual of repeatedly driving by her home, the individual said, he had an attorney write her a letter warning her to stop sending allegedly abusive e-mails. When she continued to send them, he continued, he filed for a protective order. After a hearing on his motion and that of the former girlfriend for protective orders, both were dismissed. The former girlfriend's motion was dismissed, the individual claimed, because there was no evidence that he was harassing her. He denied all of the allegations that she made against him. Tr. at 60-62.

Finally, the individual addressed his 2005 arrest for Criminal Mischief and Reckless Endangerment. He said that he picked his children up from school in preparation for spending the weekend with them. When one of them asked to be driven to the ex-wife's residence to pick up some additional items, the individual assented. As he was pulling up to the curb in front of the ex-wife's home, the individual continued, he became distracted and he accidently drove up over the curb and onto his wife's lawn. His wife was not on the lawn, he claimed, and he did not aim the car at her. The individual allegedly wanted to contest the charges, but he decided to accept a plea deal after his attorney told him that his children would have to testify at any trial. As part of his

[4] The individual was diagnosed by a DOE consultant psychiatrist in January 2017 as suffering from Major Depressive Disorder, recurrent episode, moderate, in full remission, and Generalized Anxiety Disorder. However, because the individual is undergoing treatment for these conditions, and the DOE psychiatrist concluded that they were being adequately controlled, he found that they were not causing significant defects in the individual's judgement or reliability. *See* DOE Ex. 4; Individual's Exhibit C.

[5] I note that, according to the local police officer's AAW, dated August 17, 2016, the individual's ex-wife "made the choice to forego any future maintenance payments by the individual in exchange" for the no-contact agreement. DOE Ex. 7.

sentence, the individual was required to attend domestic violence classes, which he completed. Tr. at 62-64.

The individual's two co-workers and his supervisor all testified that even in light of the DOE's allegations, they would have no concerns about the individual's trustworthiness or his ability to protect classified information. Tr. at 17-18; 21-22; 26-29. In addition, the first co-worker testified that the individual's divorce was difficult and adversarial, the second co-worker opined that, based on what he had been told by the individual, he had been treated unfairly by his ex-wife, and the supervisor said that he had not had any experience with the individual lying. Tr. at 17, 22, 26.

B. Administrative Judge's Decision

The evidence in this case establishes the existence of some significant mitigating factors. Most of the individual's actions that are at issue in this proceeding stem from a very bitter and acrimonious divorce. Also, the individual has expressed remorse and has obtained treatment and counseling concerning his admittedly improper actions. However, for the reasons set forth below, I continue to harbor serious doubts about the individual's honesty, judgment and reliability.

As an initial matter, I find that the individual falsely stated, both during the PSI and at the hearing, that he did not send the July 15, 2012, letter to his ex-wife. According to the AAW, after an investigation, the police in the city in which the ex-wife resides concluded that there was probable cause to arrest the individual because his "repetitive emails and letters show [the individual's] intent is to harass, annoy, insult through the computer network and the US postal service." DOE Ex. 7 at 2. One of those letters was a "typed three page letter in certified envelope on July 16 (*sic*), 2012" in which the AAW quoted the individual as having written "'I will hunt you down, even in your dreams. I am going to make it a nightmare for you as you made for me.' 'I know everything you have done and are doing.'" *Id.* at 1. The police's implied conclusion that the individual authored the July 15th letter is supported by similarities between that letter and the e-mail of April 25, 2012, which the individual has admitted to sending. First, the letter and the e-mail share the same aggrieved, threatening, and profane tone, directed at both the ex-wife and her lawyers. Second, the individual's ex-wife is referred to as "Ms. Uruguay" in both of them, and both contain the somewhat unusual invective "son of the whore."

I further conclude that the individual also falsely claimed, both during the PSI and at the hearing, that he did not send the January 29, 2013, e-mail. In her motion for a protective order filed in August 2016, the ex-wife stated, under penalty of perjury, that the police investigated the individual's correspondence with his ex-wife, and concluded that the harassing e-mails were sent from the individual's workplace computer. DOE Ex. 10 at 3. This statement is supported by the AAW, in which the police concluded that the individual had sent the threatening e-mail, among others. Given the individual's lack of candor regarding the July 15, 2012, letter, I did not find his explanation for these e-mails that his account was hacked to be persuasive. Instead, I believe it to be far more likely that the individual sent the e-mail in question than that it was the result of a hacking of his account.

I find that the evidence in this case does not adequately support the remaining two allegations under Guideline E; that the individual falsely stated during the PSI that he did not send the April

25, 2012, e-mail, and that he did not affix threatening and abusive notes to his monthly support payments. Although at times the individual's statements during the PSI were contradictory and unclear, it appears that the main area of disagreement between the individual and the personnel security specialist who conducted the Interview was over whether the notes and the April 25th e-mail were threatening and abusive, and not over whether the individual had sent them. Nevertheless, because I conclude that the individual lied, both during the PSI and at the hearing, about whether he had sent the July 15, 2012, letter and the January 29, 2013, e-mail, I find that serious concerns remain under Guideline E regarding the individual's honesty and trustworthiness.

The security concerns under Guideline J pertain to allegations that the individual violated a no contact agreement by sending his ex-wife a threatening and abusive letter on August 25, 2016, to the individual's September 2016 and June 2005 arrests, and to the ex-girlfriend's motion for a protective order in November 2007.

As set forth above, the individual denied having sent the August 2016 letter. I did not find this denial to be persuasive. According to the AAW, the ex-wife produced the letter for police inspection, and the envelope appeared to have been unopened. There was no return address, but the ex-wife said that she recognized the handwriting on the envelope as being that of the individual, and it was postmarked in a city that is approximately one hour's drive away from the individual's city, but is almost seven hours away from where the ex-wife lives. I therefore find it more likely that the individual wrote the letter than that it was fabricated by the ex-wife. Moreover, an examination of the August 2016 letter reveals that there are similarities in tenor and content between that letter and the one that the individual sent in July 2012. Both are profane, threatening and vulgar, and both express a profound sense of grievance. Both letters threaten that "cancer is coming soon," and both letters use the word "conscious," when it is apparent that the word "conscience" was what the author intended (2012 – "You are a user and abuser and have no conscious professor of social work;" 2016 – "You always be the Dounken-Dount (*sic*) girl who stole without any remorse, shame or conscious."). I find that the individual did send the August 2016 letter to the individual, and that he therefore violated the no-contact agreement between himself and the ex-wife.

With regard to the arrests, the individual contends that he accidently drove onto the ex-wife's lawn in 2005, and he denies having engaged in most of the behavior that led to his September 2016 arrest. Nevertheless, the fact remains that he pled guilty to illegal activity on both occasions, and as explained above, I have concluded that the individual did engage in most of the behavior that led to his 2016 arrest. The individual points to his domestic violence classes and his therapy as reasons that a recurrence of his illegal activity is unlikely. However, I believe that the first step in addressing problems is recognizing and acknowledging that those problems exist. There is no evidence that the individual has done this. Moreover, he was required to participate in domestic violence classes after his 2005 arrest, yet he still continued to engage in abusive behavior. It remains to be seen whether his most recent classes and his therapy will lead to a lasting change in his behavior.

Finally, the individual has not adequately addressed the DOE's concerns regarding the protective order sought by his ex-girlfriend. At the outset, I note under Guideline J, that allegations of criminal behavior, regardless of whether charges are brought, can give rise to security concerns

and may be disqualifying. *Adjudicative Guidelines*, ¶ 31(c). At the hearing, the individual responded to these allegations by denying them, and by offering the following description of how his relationship with the ex-girlfriend ended. He said that they met in January 2007, and that three months later, "we decided that it's not for either one of us, and I moved on." Tr. at 60. Yet five months later, after this allegedly mutual breakup, the ex-girlfriend sent him an angry and profane letter, accusing him of repeatedly driving by her house, and threatening him with a restraining order if he did not stop doing so. She then attempted to obtain a protective order against him, alleging that he had repeatedly broken into her house, stolen her mail, and repeatedly driven past her house. Given the individual's history of domestic abuse and his obviously incomplete testimony about the ending of his relationship with the ex-girlfriend, I cannot conclude that the individual has been completely forthcoming about his relationship with the ex-girlfriend, or that he did not engage in the behavior that she alleged.

V. CONCLUSION

For the reasons set forth above, I find that significant security concerns remain under Guidelines E and J. Consequently, I cannot conclude that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: September 7, 2017